BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Section 4011.10, as enacted by Statutes 2005, Chapter 481 (SB 159), and amended by Statutes 2006, Chapter 303 (SB 896) Filed on June 30, 2008 By Orange County Health Care Agency, Claimant.	Case No.: 07-TC-12 *General Health Care Services for Inmates* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 27, 2013*) (*Served October 2, 2013*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on September 27, 2013. Mr. James Harman represented claimant, Orange County Health Care Agency. Ms. Kim Pearson, Deputy Agency Director of Correctional Health Services for the Orange County Health Care Agency, also appeared on behalf of claimant. Ms. Susan Geanacou and Mr. Michael Byrne appeared on behalf of the Department of Finance (Finance).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the proposed statement of decision to deny the test claim at the hearing by a vote of 6 to 0.

Summary of the Findings

This test claim addresses a 2005 test claim statute and 2006 amendment thereto that allows local law enforcement agencies, including county sheriffs, chiefs of police, and directors or administrators of local detention facilities, to contract with hospitals providing emergency health care services for local law enforcement patients. Penal Code section 4011.10, as added and amended by the test claim statutes, also sets statutory limits on the amount that hospitals that do not contract with local agencies may charge for emergency health care services at a rate equal to 110 percent of the hospital's actual costs. Prior to the enactment of the test claim statute, local

law enforcement agencies procuring emergency health care services for law enforcement patients were not expressly authorized to contract with hospitals for emergency health care services and the amount that non-contracting hospitals could charge for these services was not capped.

Claimant requests reimbursement for complying with the Penal Code section 4011.10 rate structure for compensating hospitals when there is no contract, i.e., for having to pay 110 percent of the non-contracting hospital's actual costs for emergency services. Claimant alleges that before the statute was enacted, it had the ability to negotiate reimbursement rates with providers and was able to negotiate an indigent rate "much lower than the test claim statutes' rate structure for non-contracting hospitals."

The Commission denies this test claim. The plain language of Penal Code section 4011.10, as added by Statutes 2005, chapter 481, and amended by Statutes 2006, chapter 303, authorizes local law enforcement agencies, notwithstanding any other provision of law, to contract with hospitals for emergency health care services for local law enforcement patients and capping the amount that non-contracting hospitals can charge for emergency health care services. Penal Code section 4011.10 does not direct or obligate local agencies to contract with hospitals for emergency health care services for law enforcement patients and does not require local agencies to perform any other activities. Rather, section 4011.10 gives local agencies the option to contract for emergency services.

Although claimant may have incurred increased costs as a result of being in a weaker bargaining position due to the statute, reimbursement under the Constitution is not required. A statute that indirectly results in increased costs, without mandating local agencies to perform new activities or a higher level of service, does not require reimbursement under article XIII B, section 6 of the California Constitution. As the courts have determined, "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State."[1]

Accordingly, the Commission finds that Penal Code section 4110.10, as added and amended in 2005 and 2006, does not impose a state-mandated program on local agencies.

COMMISSION FINDINGS

I. Chronology

06/30/2008	Claimant, Orange County Health Care Agency, filed the test claim with the Commission.
07/23/2008	Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments.

[1] *City of San Jose v. State of California (1996)* 45 Cal.App.4th 1802, 1816; see also, *Lucia Mar Unified School District v. State of California* (1988) 44 Cal.3d 830, 835; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876.

08/22/2008	Department of Finance (Finance) filed comments on the test claim.
03/20/2013	Commission staff issued the draft staff analysis and proposed statement of decision, setting the matter for the May 24, 2013 hearing.
03/29/2013	Claimant requested an extension of time to file comments and a postponement of the hearing.
04/02/2013	Claimant's request for an extension of time and postponement of hearing was granted and this matter was set for hearing on July 26, 2013.
05/20/2013	Finance filed comments on the draft staff analysis.
05/28/2013	Claimant filed comments on the draft staff analysis.
07/22/2013	Claimant requested a postponement of the hearing.
07/22/2013	Claimant's request for a postponement of the hearing was granted and this matter was set for hearing on September 27, 2013.

II. Background

This test claim seeks reimbursement for costs incurred by claimant as a result of procuring emergency medical services for law enforcement patients at hospitals that claimant does not contract with for such services. Penal Code section 4011.10 authorizes local law enforcement agencies, including county sheriffs, chiefs of police, and directors or administrators of local detention facilities, to contract with hospitals providing emergency health care services for local law enforcement patients. The test claim statute, Penal Code section 4011.10, also sets statutory limits on the amount that hospitals that do not contract with local agencies may charge for emergency health care services for law enforcement patients at a rate equal to 110 percent of the hospital's actual costs.[2]

Prior law requires that law enforcement patients receive emergency medical care when necessary.[3] However, prior to the enactment of the test claim statute, local agencies were not specifically authorized to contract for emergency health care services for law enforcement patients. As stated by the Legislative Counsel's Digest, section 4011.10 was enacted because:

> Existing law authorizes the Department of Corrections and Rehabilitation to contract with providers of emergency health care services. Existing law specifies that hospitals and ambulance or other nonemergency response services that do not contract with the department shall provide those services at the Medicare rate.
>
> This bill would apply these provisions to county sheriffs, chiefs of police, and directors or administrators of local departments of correction, except that it specify that hospitals that do not contract with local law enforcement agencies

[2] Penal Code section 4011.10(b).

[3] Penal Code section 4011.5.

shall provide their services at a rate equal to 110% of the hospital's actual costs, as specified.[4]

Section 4011.10 was also enacted to:

> …save taxpayers dollars by enabling county sheriffs and police chiefs reasonable control over medical costs for inmates, suspects and victims of crime. This bill would ensure that local law enforcement agencies will be limited to reasonable and allowable costs under Medicare billing practices. This bill is consistent with existing law with respect to state prisoner health care...Under this bill, a county sheriff or police chief can continue to negotiate contracts with health care providers for emergency and non-emergency services for people under their jurisdiction…[5]

The test claim statute was modeled after Penal Code section 5023.5. Section 5023.5, enacted by Statutes 2004, chapter 227 and effective August 16, 2004, allows the California Department of Corrections and Rehabilitation (CDCR) and the California Youth Authority (CYA) to contract with providers of emergency health care services. Hospitals that do not contract with the CDCR or the CYA for emergency health care services must provide these services to these departments at the rate established by Medicare. Neither CDCR nor CYA may reimburse a hospital that provides these services, and that the department has not contracted with, at a rate that exceeds the hospital's reasonable and allowable costs, regardless of whether the hospital is located within or outside of California. Penal Code section 4011.10 was added by Statutes 2005, chapter 481, to allow local public entities other than the CDCR and CYA to contract for emergency health care services.

As originally enacted, Penal Code section 4011.10 stated, in relevant part:

> (b) Notwithstanding any other provision of law, a county sheriff or police chief ***may contract*** with providers of emergency health care services. Hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the hospital's actual costs according to the most recent Hospital Annual Financial

[4] Legislative Counsel's Digest, Statutes of 2005, Chapter 481, S. B. No. 159. Section 4011.10 also states that the Legislature intended section 4011.10 to: (1) provide county sheriffs, chiefs of police, and directors or administrators of local detention facilities with an incentive not to engage in practices designed to avoid payment of legitimate emergency health care costs for the treatment or examination of persons lawfully in their custody, and to promptly pay those costs as requested by the provider of services; and (2) encourage county sheriffs, chiefs of police, and directors or administrators of local detention facilities to bargain in good faith when negotiating a service contract with hospitals providing emergency health care services.

[5] Exhibit F, Senate Rules Committee, Third Reading, Senate Bill 159, as amended May 3, 2005, p. 5.

> Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio. (Emphasis added.)

Section 4011.10 was amended by Statutes 2006, chapter 303, as urgency legislation to state, in relevant part:

> (b) Notwithstanding any other provision of law, a county sheriff, police chief or other public agency that contracts for emergency health services, ***may contract*** with providers of emergency health care services for care to local law enforcement patients. Hospitals that do not contract with the county sheriff, police chief, or other public agency that contracts for emergency health care services shall provide emergency health care services to local law enforcement patients at a rate equal to 110 percent of the hospital's actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio. (Emphasis added.)

The 2006 amendment did not alter the purpose of section 4011.10 or the Legislature's statement of intent contained in section 4011.10.[6] Both Statutes 2005, chapter 481 and Statutes 2006, chapter 303 contained a January 1, 2009 sunset date for section 4011.10. However, later amendments to this section extended and then eliminated the sunset provision. Although section 4011.10 has been subsequently amended, claimant has not pled these amendments and the amendments are not relevant to the test claim.[7]

III. Position of Claimant and Interested Parties

A. Claimant's Position

Claimant alleges that the test claim statute constitutes a reimbursable state-mandated program or higher level of service within an existing program. Claimant "is the department that pays claims for health care provided to persons in the custody of the Orange County Sheriff."[8] Claimant contracts for some of the care of its inmates, but there are instances when claimant uses the services of hospitals that claimant does not contract with. Claimant requests reimbursement for complying with the Penal Code section 4011.10 rate structure for compensating hospitals when there is no contract, i.e., for having to pay 110 percent of the non-contracting hospital's actual costs for emergency services.

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[6] Statutes 2006, chapter 303.

[7] Statutes 2008, chapter 142 (extending provisions section 4011.10 until January 1, 2014); Statutes 2011, chapter 39 (recasting provisions of section 4011.1 to apply to health care services generally, instead of emergency health care services, and deleting the provision making section 4011.10 inoperative as of January 1, 2014).

[8] Exhibit A, Test claim, dated June 30, 2008, section 5 ("Written Narrative"), p 1.

Claimant alleges that the test claim statute's rate structure for non-contracting hospitals has caused claimant to incur $1,841,893.49 in additional emergency medical costs during the 2007-2008 fiscal year and will cause claimant to incur an amount similar to the $1,841,893.49 in additional medical costs for each year going forward.[9] Prior to the enactment of Penal Code section 4011.10, claimant reimbursed emergency service providers at rates set by claimant's "Medical Services Initiate" (MSI) program, which is a federal, state, and county funded health care program that provides medical care for Orange County's low-income citizens.[10] The test claim appears to indicate that prior to the enactment of the test claim, all hospitals within Orange County billed claimant an indigent rate for treatment of law enforcement patients pursuant to Health and Safety Code section 17000 et seq.[11] Although the test claim does not explain why treatment of all law enforcement patients was previously billed at indigent rates, the indigent rates appear to be much lower than the test claim statute's rate structure for non-contracting hospitals.

Claimant did not provide a statewide cost estimate because after contacting numerous agencies and state-wide associations, it could find no one else with any increased costs to report.[12]

In comments submitted in response to the draft staff analysis, claimant disagreed with the conclusion that Penal Code section 4011.10 does not impose any state-mandated activities upon local agencies. Claimant's comments allege that Penal Code section 4011.10 "imposes new and unique mandated activity on Claimant…to provide medical services to inmates at an increased cost." Claimant states that prior to the enactment of Penal Code section 4011.10, claimant was

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[9] Exhibit A, Test claim, dated June 30, 2008, section 6 ("Declarations"), pp. 3-4, "Declaration of Melissa Tober." Ms. Tober's declaration states that the test claim includes increased costs for both contracting and non-contracting hospitals and that 67% of the increased costs are associated with services provided by non-contracting hospitals. Ms. Tober's declaration does not indicate why the rate charged by Western Medical Center Anaheim, a contracting hospital, increased as a result of Penal Code section 4011.10.

[10] *Id*.; *See also*, Exhibit F, Orange County Health Care Agency Web site, Medical Services Initiative (MSI), http://ochealthinfo.com/about/medical/msi (accessed on July 8, 2013). Claimant's website further states, "The MSI program contracts with all of the County's key clinics and hospitals and provides integrated care through contractual relationships with surgery centers, skilled nursing facilities, urgent care facilities, "minute clinics" and a variety of diagnostic centers and programs. Financial eligibility is determined on a case-by-case basis however, only persons with annual incomes below 200% of the Federal Poverty Level are eligible. In applying for the program, proof of Orange County residency and U.S. citizenship or legal residency is required." Neither the test claim nor claimant's website indicate why all law enforcement patients qualified as indigents under its MSI program.

[11] Exhibit A, Test claim, dated June 30, 2008, Tober Decl., *supra*, pp. 3-4.

[12] Exhibit A, Test claim, dated June 30, 2008, section 5 ("Written Narrative"), p. 2; *See also* section 6 ("Declarations"), pp. 5-6, "Declaration of Allan P. Burdick."

able to procure medical treatment for all law enforcement patients at indigent rates irrespective of whether an inmate was indigent.[13] Claimant further states that Penal Code section 4011.10 "eviscerated" claimant's ability to procure treatment for all law enforcement patients at indigent rates. That is, the test claim statute negatively affected claimant's ability to bargain for indigent rates because the rate cap set by Penal Code section 4011.10--110 percent of the hospitals' actual costs for emergency services--is higher than the indigent rate claimant was previously able to negotiate. Claimant states that as a result of the test claim statute, hospitals will no longer provide medical services at the indigent rate, which has caused claimant to incur increased costs.

B. Department of Finance's Position

Finance submitted written comments on August 22, 2008. Finance argues that the activities involved in the test claim are not reimbursable on the following grounds:

- The test claim may have been filed after the statute of limitations pursuant to Government Code section 17551(c). Finance notes that section 17551 requires that a test claim be filed not later than 12 months of the effective date of the statute or 12 months of first incurring costs, whichever is later. Finance notes that the test claim was filed on June 30, 2008, approximately 30 months after the effective date of the test claim statute and 21 months after the test claim statute was amended in 2006. Finance notes that the test claim states that claimant first implemented the test claim statute on July 1, 2007. Finance admits that it does not have evidence indicating whether claimant first incurred costs prior to July 1, 2007.[14]
- The test claim statute does not impose a new program or higher level of service on local agencies.
- The relevant provisions of the test claim statute are optional and do not require that public agencies to contract with emergency health care and medical response providers.

On May 20, 2013, Finance submitted comments concurring with the recommendation in the draft staff analysis that the test claim should be denied because "the plain language of the Penal Code section 4011.10 does not impose a new program or higher level of service on the local agencies within the meaning of Article XIII B, section 6 of the California Constitution."[15]

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[13] Exhibit E, Claimant comments, pp. 2-3. Claimant's rebuttal comments also state: "Whether every inmate could or should have been considered truly indigent for MSI purposes is irrelevant: HCA and the hospitals *negotiated and agreed* that medical services for inmates would be paid at the MSI rates."

[14] Exhibit B, Department of Finance Comments, pp. 1-2.

[15] Exhibit D, Department of Finance Comments.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:
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> (1) Legislative mandates requested by the local agency affected.
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> (2) Legislation defining a new crime or changing an existing definition of a crime.
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> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[16] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[17]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[18]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[19]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[20]

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[16] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[17] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[18] *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist*.) (2004) 33 Cal.4th 859, 874.

[19] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.)

[20] *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[21]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[22] The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[23] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[24]

A. Evidence In The Record Supports The Finding That The Test Claim Was Filed Within The Statute Of Limitations

Although Finance suggests that that Government Code section 17551(c) may bar this test claim because the claim may not have been filed within 12 months of first incurring costs, evidence in the record supports the finding that the test claim was timely filed.

Statutes 2005, chapter 481 became effective on January 1, 2006, and Statutes 2006, chapter 303 became effective on September 18, 2006. The test claim was filed on June 30, 2008, approximately 30 months after the effective date of the test claim statute and 21 months after the test claim statute was amended in 2006.

Government Code section 17551(c) establishes the statute of limitations for the filing of test claims as follows:

> Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

The test claim was not filed within 12 months following the effective date of the statutes. However, the test claim indicates that claimant "implemented" the test claim statute on July 1, 2007, which resulted in a cost increase of $1,841,893.49 in the 2007-2008 fiscal year.[25] This statement is supported by the Declaration of Melissa Tober, which states that prior to

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[21] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[22] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[23] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

[24] *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

[25] Exhibit A, Test claim, dated June 30, 2008, Tober Decl., *supra*, pp. 3-4.

July 1, 2007, claimant paid for emergency health care services for law enforcement patients "at rates equal to reimbursement rates for services provided through Orange County's Medical Services for Indigents Program mandated by Welfare & Institutions Code 17000 . . . .."

Based on the foregoing, the Commission finds that claimant first incurred additional costs beginning on July 1, 2007 - the date claimant first began to pay non-contracting hospitals as required by the test claim statute. The Commission further finds that there is no evidence in the record to support the finding that claimant incurred increased costs prior to July 1, 2007. Accordingly, the Commission finds that the test claim was filed within the statute of limitations provided in Government Code section 17551(c).

B. Penal Code Section 4011.10, As Added and Amended in 2006, Does Not Impose any State-Mandated Activities on Local Agencies

In 2005, the test claim statute added section 4011.10 to the Penal Code to state the following:

> (b) Notwithstanding any other provision of law, a county sheriff or police chief ***may contract*** with providers of emergency health care services. Hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the hospital's actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio. (Emphasis added.)

Section 4011.10 was amended by Statutes 2006, chapter 303 as urgency legislation to state, in relevant part:

> (b) Notwithstanding any other provision of law, a county sheriff, police chief ***or other public agency*** that contracts for emergency health services, ***may contract*** with providers of emergency health care services for care to local law enforcement patients. Hospitals that do not contract with the county sheriff, police chief, or other public agency that contracts for emergency health care services shall provide emergency health care services to local law enforcement patients at a rate equal to 110 percent of the hospital's actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio. (Emphasis added.)

Although the test claim does not explicitly state what new activities the test claim statute requires local agencies to perform, the test claim seeks reimbursement for the increased costs incurred as a result of section 4011.10. The claimant contends that Penal Code section 4011.10 requires local agencies to pay 110 percent of hospitals' actual costs for providing emergency health care services to law enforcement patients. The claimant further alleges that before the statute was enacted, it had the ability to negotiate reimbursement rates with providers and was able to negotiate an indigent rate "much lower than the test claim statutes' rate structure for non-contracting hospitals." The claimant alleges that:

> The State has eviscerated the favorable relationship between [claimant] and the providers. In its place, the State mandated Orange County taxpayers – already burdened as donors to the State – pay a higher rate for inmate medical care than the previous rates providers consensually received. Since [claimant] has no authority to pay less than that amount to non-contracted facilities, those facilities have no reason to enter contracts with [claimant].[26]

The plain language of section 4011.10, however, does not require local agencies to perform any activities or provide an increased level of service to the public. Moreover, subdivision (e) specifies:

> Nothing in this section shall require or encourage a hospital or public agency to replace any existing arrangements that any city police chief, county sheriff, or other public agency that contracts for health services for those departments, has with his or her health care providers.

As noted in legislative history, section 4011.10 was designed to save local agencies money by capping the amount that non-contracting hospitals charge for emergency medical services, which could vary greatly from hospital to hospital prior to the enactment of the test claim statute.[27] Prior to the enactment of section 4011.10, Penal Code section 4011.5 authorized law enforcement agencies to procure emergency medical care when necessary.[28] Section 4011.10 allows local agencies to contract for this emergency medical care and caps the amount that non-contracting hospitals may charge. Section 4011.10 allows local agencies to decide whether or not to contract for emergency health care services for law enforcement patients.

Pursuant to section 4011.10, claimant has the option of contracting for medical services or using non-contracting hospitals for these services. In this case, the claimant has made the decision to contract with one hospital for emergency services for inmates, Western Medical Center Anaheim, but in most cases uses non-contracting hospitals for emergency services. In fiscal year 2007-2008, claimant chose to use the emergency services of 21 non-contracting hospitals. These decisions are based on local discretion, and are not mandated by the state. The test claim statute does not require the claimant to contract, or to use non-contracting hospitals. However, if a non-contracting hospital is used, the statute was designed to save local agencies' money by capping the amount that non-contracting hospitals may charge. As the test claim statute provides local agencies with the option to either contract for emergency services or to use non-contracting hospitals whose ability to charge is capped, the test claim statute does not mandate claimant to perform any activities.

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[26] Exhibit E, Claimant's comments on draft staff analysis and proposed statement of decision, page 2.

[27] Exhibit F, Senate Floor Analysis, Senate Bill 159, as amended August 31, 2005, pp. 5-6.

[28] Penal Code section 4011.5.

Claimant's rebuttal arguments allege that section 4011.10 amounts to a state mandate because section 4011.10 has made it impossible for claimant to convince hospitals to provide services at the lower indigent rate. Claimant's rebuttal comments also clarify that prior to the enactment of section 4011.10, claimant was able to procure medical care for all inmates at indigent rates, whether or not every inmate was truly indigent. As a result, while section 4011.10 was designed to provide local agencies with more bargaining power and lower rates charged to local agencies, section 4011.10 had the opposite effect on claimant because claimant was uniquely situated and able to negotiate care for inmates at very low indigent rates. Although section 4011.10 may have affected claimant differently than the Legislature intended and may have caused claimant to incur increased costs, section 4011.10 does not mandate claimant to perform any activities or to provide an increased level of service to the public. Thus, section 4011.10 simply results in increased costs and does not require reimbursement under the Constitution. As the courts have determined, "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State."[29]

Based on the foregoing, Penal Code section 4011.10, as added in 2005 and amended in 2006, does not impose a state-mandated program on local agencies.

V. Conclusion

Based on the foregoing, the Commission concludes that Penal Code section 4011.10, as added by Statutes 2005, chapter 481 and amended by Statutes 2006, chapter 303, does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

[29] *City of San Jose v. State of California (1996)* 45 Cal.App.4th 1802, 1816; see also, *Lucia Mar Unified School District v. State of California* (1988) 44 Cal.3d 830, 835; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876.

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RE: **Adopted Statement of Decision**

General Health Care Services for Inmates, 07-TC-12
Penal Code Section 4011.10
Orange County Health Care Agency, Claimant

On September 27, 2013, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.

Dated: October 2, 2013

Heather Halsey, Executive Director